



POLICE DEPARTMENT

The
City
of
New York

In the Matter of the Disciplinary Proceedings :
- against : FINAL
Police Officer Monty Green : ORDER
Tax Registry No. 934330 : OF
Fleet Services Division : DISMISSAL

Police Officer Monty Green, Tax Registry No. 934330, Shield No. 7433, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2011-3442 and 2011 4085 as set forth on form P.D. 468-121, dated January 12, 2011 and April 12, 2011, respectively. After a review of the entire record in Disciplinary Case No. 2011-3442, Respondent has been found Guilty of Specification Nos. 1-4 and 7 10; and has been found Not Guilty of Specification Nos. 5 and 6. In Disciplinary Case No. 2011-4085, Respondent, has been found Guilty of Specification Nos. 1-2 and 4 5; and has been found Not Guilty of Specification Nos. 3 and 6. Now therefore, pursuant to the powers vested in me by Section 14 115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Monty Green from the Police Service of the City of New York.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly".

RAYMOND W. KELLY
POLICE COMMISSIONER

EFFECTIVE: On December 3, 2012 at 0001HRS.



POLICE DEPARTMENT

October 5, 2012

In the Matter of the Charges and Specifications : Case Nos. 2011-3442 &
against - : 2011-4085

Police Officer Monty Green :

Tax Registry No. 934330 :

Fleet Services Division :

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Martin G. Karopkin
Deputy Commissioner Trials

A P P E A R A N C E:

For the Department: Vivian Joo, Esq. and Nancy Slater, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Eric Sanders, Esq.
The Sanders Firm, P.C.
1140 Avenue of the Americas – 9th Floor
New York, New York 10036

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before the Court on February 15, February 16, March 6, March 7, April 26, and April 30, 2012, charged with the following:

Disciplinary Case No. 2011 3442

1. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about July 26, 2009, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department to wit: said Police Officer pulled his firearm from his waist, displayed it and stated in sum and substance to Person A, "Back the fuck away from my door."

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

2. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about July 26, 2009, while on-duty, failed to voucher recovered property consisting of marijuana, keys and mace in a timely manner.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

P.G. 218-01, Page 1, Paragraph 1-8 INVOICING PROPERTY GENERAL PROCEDURE

3. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about July 26, 2009, while on duty, failed to conduct a warrant check on Person A, upon issuing a Criminal Court Summons to Person A.

P.G. 209-09, Page 1, Paragraph 3 PERSONAL SERVICE OF SUMMONS RETURNABLE TO TRAFFIC VIOLATIONS BUREAU OR CRIMINAL COURT

P.G. 209-25, Pages 1-2 PROCESSING WARRANT CHECKS OVER CITYWIDE I AND II RADIO

4. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about July 26, 2009, while on duty, failed to properly fill out a Criminal Court Summons, to wit: said Police Officer filled in the incorrect time of offense and subject's residential address on said summons.

P.G. 209-11, Pages 1-2 CRIMINAL COURT SUMMONS - GRAPHIC

P.G. 209-09, Page 1, Paragraph 2, Page 2, Paragraphs 8, 12-14 PERSONAL SERVICE OF SUMMONS RETURNABLE TO TRAFFIC VIOLATIONS BUREAU OR CRIMINAL COURT

5. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about July 26, 2009, while on-duty, failed to perform a field test for marijuana for a Criminal Court Summons charging Unlawful Possession of Marijuana pursuant to Penal Law Section 221.05, resulting in the dismissal of said Summons.

P.G. 209-09, Page 3, Paragraphs 15-17 PERSONAL SERVICE OF SUMMONS
RETURNABLE TO TRAFFIC VIOLATIONS
BUREAU OR CRIMINAL COURT

6. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about July 26, 2009, while on-duty, did wrongfully fail and neglect to properly maintain Department records, to wit: said Police Officer omitted to sign out end of tour on the command roll call as required.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

7. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about July 26, 2009, while off-duty, failed to remain at the scene of an unusual police occurrence to which he was a participant. *(As amended)*

P.G. 212-32, Page 1, Paragraph 1 OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE

8. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about July 26, 2009, while off-duty, did wrongfully engaged in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Police Officer submitted an overtime report for overtime he did not perform. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT

9. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about July 26, 2009, while off-duty, having become aware of an allegation of corruption or serious misconduct involving a member of the service, did fail and neglect to notify his Commanding Officer and/or the Internal Affairs Bureau Command Center, as required, to wit: said Police Officer failed to notify the Department of an allegation made against him for failing to return prisoner property. *(As amended)*

P.G. 207-21, Pages 1-2 ALLEGATION OF CORRUPTION AND OTHER
MISCONDUCT AGAINST MEMBERS OF THE SERVICE

10. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about July 26, 2009, while on duty, failed to ensure that the violation observed by said Officer matched the section of the Penal Law cited in the Criminal Court Summons issued to Person A. *(As amended)*

P.G. 209-11, Pages 1-3 CRIMINAL COURT SUMMONS GRAPHIC

Disciplinary Case No. 2011 4085

1. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about and between August 1, 2009 and January 10, 2010, did knowingly associate with six (6) individuals reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities, in that said Officer had telephone contact and/or in person meetings with said individuals.

P.G. 203-10, Page 1, Paragraph 2 – GENERAL REGULATIONS

2. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about and between September 1, 2009 and January 11, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer, having observed or after being made aware that individuals in his company were in possession of marihuana and involved in the act of or in the promotion of prostitution, failed and neglected to take proper police action.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

3. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about and between June 1, 2008 and December 15, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that he maintained insurance for his personal vehicle using an address in [REDACTED] and had said vehicle registered to said address, when in fact he resided in [REDACTED].

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

4. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about and between November 1, 2009 and December 31, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer had multiple conversations with undercover officers, identities known to the Department, encouraging prostitution and soliciting clients for the purpose of engaging in sexual acts in exchange for money.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

5. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about and between September 1, 2009 and January 11, 2010, engaged in conduct prejudicial to the good order , efficiency or discipline of the Department in that said Officer patronized “Rockwell’s Bar and Lounge,” a premises used in the commission of criminal acts.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

6. Said Police Officer Monty Green, while assigned to the 73rd Precinct, on or about and between June 1, 2008 and December 15, 2010, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he failed to notify the Department of Motor Vehicles of his change of address as required.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Vivian Joo and Nancy Slater, Esqs., Department Advocate's Office. Respondent was represented by Eric Sanders, Esq., The Sanders Firm, P.C. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

In Case No. 2011-3442, Respondent is found Guilty of Specification Nos. 1-4 and 7-10. He is found Not Guilty of Specification Nos. 5 and 6. In Case No. 2011-4085, Respondent is found Guilty of Specification Nos. 1 2 and 4-5. He is found Not Guilty of Specification Nos. 3 and 6.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Ruben Duque, Sergeant Titus Parham, Sergeant Nicholas Danna, Detective Richard Straus, Sergeant Michael Rothenbacher, Sergeant Kevin Prentice, Sergeant Iladen Laureano, Sergeant James Howard, Lieutenant Patrick Hickey, Sergeant Larry Flunory, Undercover Officer No. WXYZ and Person L as witnesses.

Sergeant Ruben Duque

Duque previously was assigned to the Internal Affairs Bureau (IAB). He was assigned to investigate an allegation that Respondent menaced Person A on the corner of East New York Avenue and Union Street in Kings County. On that day, Duque interviewed Person A and a second witness, Person B. Department's Exhibit (DX) 1 and 1awere the recording and transcript ofthe interviews. The Department attempted to produce both women but was unable to do so.

Person A stated in the interview that she and her good friend, Person B, were walking home on July 26, 2009, from a party when they were stopped by two members of the service, Respondent and Sergeant Titus Parham. The officers stopped them because Person A had in her hand a marijuana cigarette that she was about to light. Respondent spoke with Person A while Parham spoke with Person B. Respondent took the marijuana cigarette and gave it to Parham. He also took from Person A her keys and a small bottle of mace that was attached to the keychain.

Respondent told Person A that while she could go to jail, he would not arrest her if she gave him her telephone number. Person A provided Respondent with her name and number, and Respondent and Parham got back into their vehicle and drove away. This initial stop occurred at 0400 hours. No summons was issued to Person A at the scene.

While she was on her way home, Person A received a call from Respondent trying to arrange a meeting with her. She told Respondent that she was still on her way home, and Respondent replied that he would call again when his tour was over.

At approximately 0525 hours, after a conversation with Respondent as to where to meet, Person A and Person B met him at the corner of East New York and Union. Respondent was no longer in uniform and was driving a white Infiniti with tinted windows. Person A approached the

car, opened the passenger door, and sat inside. Respondent invited her for breakfast and to go back to his house. Person A told him that she had a fiancé, had no interest in going home with him, and just wanted her keys back as he had promised. Respondent told her that the keys were in the trunk of his car. He then went to the trunk and removed the keys.

Respondent told Person A that the mace was illegal, removed the mace from the key ring, placed it in his pocket, and went back to sit in the driver's seat of the car. Person A stood by the open driver's door and repeatedly asked Respondent to give her the keys. Respondent refused, and Person A called 911 on her cell phone. When she reached into the car to grab the keys from his hand, Respondent removed his firearm from its holster. Respondent kept screaming, "Back up, back up." Person A was scared and backed up, and Respondent drove away.

Person A told Duque that she never received her keys, or a summons or property voucher from Respondent.

Person B stated in her interview that because they were separated, she was unaware of the conversation that took place between Person A and Respondent during the initial stop. After Person A received a phone call, Person B went with her to meet Respondent. When Respondent saw Person B, he asked her what she was doing there. He told her, "You are not even supposed to be here. I don't want to talk to you, I want to speak to your sister" (Person A and Person B were not related, but referred to each other as sisters because of their close friendship).

When Person A got into Respondent's car, Person B stayed outside. She saw Respondent get out of the car, remove the keys from the trunk, and return to the driver's seat. Person B repeatedly told Respondent to give Person A the keys, and when Respondent refused to do so, Person B informed him that she had his license plate number. Person B heard Person A screaming at Respondent to give her the keys, and Respondent telling her to back up. Person A backed away

from the car, and Respondent drove away. After Respondent left, Person A told Person B that Respondent had pulled his gun on her.

Duque reviewed Person A's cell phone. DX 2a-f were screen captures of text messages from the phone. DX 2a, from Respondent's phone at 0459 hours, read, "I'm outside. Come on." DX 2b, sent from Respondent's phone 11 minutes earlier, said, "Yo, you left your keys and mace with us." DX 2c showed a missed call from Respondent at 0516, and DX 2d an incoming call at 0504. DX 2e was a text message that Person A sent to Respondent, stating, "I'm trying to go home on Wednesday. I need those keys and i need a pink paper." This was a reference to the pink copy of the voucher generally needed by citizens to retrieve property from the property clerk. Duque explained that if, as his investigation had indicated, Person A's keys were vouchered at the 73 Precinct, Person A should have received the pink copy.

DX 2f was sent by Person A and read, "need a pink paper. Please I need my keys I DONT LUK BAK!" This second text to Respondent was sent at Duque's direction at 2109 hours to see if Respondent would respond.

DX 3 and 4, Respondent's and Person A's cell phone records, respectively, confirmed that numerous calls were made between the two phones between 0434 and 0517 hours on July 26, 2009.

Person A's phone records also showed that she made a 911 call at 0525 hours (see DX 5, Sprint report; DX 6, recording; DX 6a, call transcript). The call was transferred to the IAB Command Center. On the call, Person A can be heard saying in the background, "Just give me my keys. Sir, sir, please, can you give me my keys? What are you going to shoot me?"

DX 7 was a summons that Respondent issued to Person A. While Respondent wrote on the summons that Person A's address was [REDACTED], Person A told the Department that

her address was [REDACTED] and her actual residence at the time was in North Carolina. Respondent indicated on the summons a time of "0310 p.m." Duque stated that, based on his investigation, the correct time of the offense was sometime around 0400 hours. While Respondent cited Penal Law § 221.05, unlawful possession of marijuana, what he should have cited was § 221.10, criminal possession of marijuana, because Person A's marijuana was in public view.

On the rear side of the summons, Respondent indicated that a warrant check was not conducted and wrote "NYSPIN Down," indicating that the New York State Police Information Network was not functioning. Duque explained that a warrant check should be conducted whenever a summons is issued to determine if the recipient has an active warrant. Duque learned from the Management Systems Information Division (MISD) that at no point on July 25 or 26, 2009, did NYSPIN go down.

No field tests were performed on the marijuana that was recovered from Person A. The summons was stamped "Dismissed Legal Insufficiency" on September 15, 2009, and Duque explained that this would occur if a field test was not performed.

DX 8 was the roll call for the 73 Precinct on the day of the incident. Respondent failed to sign out at the end of tour. DX 9 were two Property Clerk's Invoices for the property recovered from Person A: one invoice, P803804, was for the marijuana cigar, and the second, P803797, was for the key ring and pepper spray case. On this second invoice, Respondent wrote in the remarks section that he made an attempt to return the property via telephone but Person A was unable to retrieve it. DX 10 was a copy of the 73 Precinct property log. There was no record that the property vouchers were removed from the desk.

Duque explained that, specifically with marijuana and narcotics, a command log entry was required whenever property is brought before the desk and vouchered. Upon review of the 73 Precinct command log, however, Duque did not see any entries regarding the property recovered from Person A. While marijuana should be vouchered as soon as possible after its recovery, Duque determined that Person A's property was not vouchered in a timely manner. He determined that the property was not vouchered until some time after 0530 hours. This was because Person A saw her keys at 0525.

DX 11 was an overtime report submitted by Respondent. On the report, Respondent indicated that he worked until 0515 hours. Duque determined that Respondent did not work the full overtime that he put in for. He explained that according to the phone records and text messages, Respondent was outside of Whorley's residence at approximately 0500.

On cross examination, Duque testified that he did not know exactly where Respondent was located when he sent the text messages and made the telephone calls to Person A. Duque's determination that Person A did not receive a summons was based on what she told him. He did not have any independent knowledge of whether or not she actually received a summons.

Person A and Person B were standing close to each other during the incident. But while Person A was standing right at Respondent's open car door, Person B was standing near the back of the car at an angle. From where she was standing, Person B could not see inside the car and did not see Respondent's firearm.

Duque admitted that Person A had a criminal history, mostly as a juvenile in North Carolina. While Duque recalled that she had a prior marijuana arrest, he did not recall arrests for criminal possession of a weapon or larceny.

Duque believed that the marked police van in which Respondent was riding that day had a mobile data terminal (MDT), but he was not certain. Duque confirmed that warrant checks could be performed on MDTs, but the MDT system sometimes was down. He did not know if MDTs and NYSPIN ran on the same system, and he did not check to see if the radio system for MDTs was functioning on the day of the incident.

Person A never told Duque anything about Respondent trying to sign her up as a confidential informant (CI). Respondent was assigned to the conditions team.

Respondent wrote "Old Timers Day" as the reason for overtime on his overtime slip. Old Timers was a sort of reunion event for the community in the 73 Precinct, attracting various people who had lived there in the past. Respondent had been assigned to work it, and all members of the service who worked the event incurred overtime. Respondent's slip was signed by his immediate supervisor, Parham. A command log entry regarding the slip was made two days later, a delay inconsistent with Department policy. It should have been made on the same day that the overtime was incurred. Duque confirmed that the command log entry for the overtime would have sufficed in lieu of Respondent signing out on the return roll call.

The 73 Precinct desk officer on the day of the incident informed Duque that there was a shooting that day, the precinct was hectic, and she signed so many property vouchers that "she doesn't know what she signed." She recalled Respondent coming to the desk with the vouchers, but Duque could not say specifically what time that occurred.

Duque testified that Respondent vouchedered the marijuana cigarette in a manner consistent with Department policy except for the fact that he did not conduct a field test. In order to conduct field testing, a member of the service first must be trained. According to Duque, if Respondent was not trained, he either should have found a member from his command that was

trained, or contacted the Organized Crime Control Bureau (OCCB) group that covered his command. At another point, however, Duque confirmed that the proper procedure was to voucher marijuana and then send it to the laboratory for analysis. He did not know if laboratory analysis was done in this case.

On re-direct examination, Duque confirmed that was a violation of the Patrol Guide to give property back to an individual without first vouchering it. Although Respondent sent his text message stating, "I'm outside. Come on," at 0459 hours, Person A waited until approximately 0524 to meet him because she was eating.

Upon examination by the Court, Duque stated that he did not know if Respondent or his team received field-test training.

An MISD audit revealed that no warrant check for Person A was conducted. Duque did not know if the audit would have revealed if somebody tried to use the MDT but the system was down.

Duque testified that officers received Property Clerk's Invoices from the desk officer. It was the desk officer's responsibility to note in the property log the time that invoices were taken.

Sergeant Titus Parham

Parham was assigned to the 84 Precinct Detective Squad at the time of trial. But on July 25, 2009, he was assigned to the 73 Precinct. He worked the Old Timers detail. While still on duty at 0315 hours the next day, he and Respondent were traveling on Eastern Parkway in a Department van when they observed Person A with marijuana. Respondent approached Person A while Parham spoke with Person B. Parham heard Person A tell Respondent that she was coming

from a party, and he observed her open her hands to present Respondent with keys and the marijuana. He did not hear any other conversation between Respondent and Person A.

Parham never gave Respondent permission to register Person A as a CI, and he did not recall hearing any conversation about the matter.

Parham directed Respondent to issue Person A a summons. Parham stayed with Person B while Respondent and Person A walked to the van. At one point, Parham saw Respondent hand Person A what looked like a piece of paper wrapped around an identification card. Parham did not see the contents of that piece of paper, nor did he confirm whether Respondent actually issued Person A a summons at the scene.

According to Parham, there was no MDT in the van. Neither he nor Respondent ever went on the radio. Person A had informed Respondent that she was from out of state.

Parham and Respondent resumed patrol. Upon return to the command, Respondent stated to Parham, "Oh, shoot, I got [Person A's] keys." Parham instructed him to voucher them.

At "approximately" 1513 hours that day, Respondent called Parham at home and informed him that he tried to return the keys but was unable to do so. Parham reminded Respondent that he had instructed him to voucher the keys, and Respondent said that he had.

On cross examination, Parham testified that he and Respondent had worked together for approximately a year prior to the day of the incident.

While Parham did not recall the van having an MDT, he conceded that it was possible that there was one. Parham did not know whether Respondent attempted to perform a warrant check over the radio.

Parham had seen officers give keys back to people, and he had done so himself.

Parham believed that Respondent had dealt with CIs in the past. Officers were encouraged to develop street contacts.

Parham and Respondent returned to the command at approximately 0400 hours. Parham, Respondent and the rest of the conditions team filled out overtime slips.

Sergeant Nicholas Danna

Danna, of IAB, conducted an official Department interview of Respondent on May 24, 2011. Respondent admitted that he knew someone was going to call 911 at the scene of the July 26, 2009, incident. After investigators told Respondent that 911 had been called during the incident, Respondent replied, "I know, they said they were going to call the police, and I said, okay, call the police." According to Danna, per Department policy, if a member is aware that the police are called during an off-duty incident, the member must remain at the scene and await the patrol supervisor.

Respondent also stated in the interview that Person A accused him of stealing her keys. At that point, Respondent should have notified IAB upon becoming aware of an allegation of corruption against him.

DX 12 was Respondent's Activity Log for the date of the incident. According to Respondent's log entries, his tour of duty was scheduled to end that day at 0435 hours. While Respondent indicated in the log that he attempted to give Person A back her keys at 0445 and ended his tour at 0510, he stated in his interview with Danna that he was off duty when he went to return the keys.

On cross examination, Danna confirmed that Respondent stated in his interview that he never saw Person A make a phone call. Respondent also stated that he saw Person B on the phone but was not sure who she was calling.

Detective Richard Straus

Straus was assigned to the Auto Crime Division. During the course of a theft and-export investigation in August 2009, he overheard wiretapped telephone conversations that took place between an unidentified male, later identified as Respondent, and Person C, a subject of the investigation (although not the main subject). DX 31 and 31a were the recording and transcript of an August 6, 2009, call. In the call, Respondent stated, "I was doin a little pimpin thing ya know I had a bitch but the bitch loved coacain [sic]. . . . Yeah I had a coke bitch named Person D." In the conversation there was a lot of mention of the word "bitch." Straus explained that in his experience the word was used to refer to a female prostitute. There was also talk about a "charge." Straus explained that this referred to the goods and services a pimp provided to a woman to get her started working as a prostitute. (The woman then was obligated to "work off the charge," i.e., she owed the pimp for what he provided her).

In the conversation, Respondent stated that he never identified himself as a pimp inside a club. Straus stated that when prostitutes were allowed to enter nightclubs, pimps were prohibited from identifying themselves as pimps to other people inside the club.

DX 32 and 32a were the recording and transcript of an August 7, 2009, call. In the call, Respondent indicated that he wanted a woman to come work for him and he wanted to pick her up on Sunday, so the woman had until Sunday to work off her charge with her previous pimp. The previous pimp was referred to as Panama.

On cross examination, Straus confirmed that at various points in the August 6, 2009, call Respondent suggested that he was not a pimp. For example, Respondent stated, "I didn't tell a bitch I was a pimp because I wasn't pimpin,'" and, "You can't put a charge on a bitch in a club cause . . . first of all there's no pimpin in the club." Similarly, Person C never suggested that Respondent was a pimp. It was Straus' interpretation of the wiretapped phone calls that Respondent was a pimp.

Sergeant Michael Rothenbucher

Rothenbucher was assigned to IAB. He testified that a conversation that related to Respondent was heard on a wiretap during the course of an Auto Crime Division investigation. The subject of the Auto Crime investigation was Person C. He was heard in the conversation stating that his friend was a detective. As a result, a notification was made to IAB in July 2009. The following month, Person C was captured on a wiretap discussing low-level prostitution with Respondent.

As part of his investigation, Rothenbucher conducted multiple surveillances of Respondent. Respondent primarily drove one of two white Infinitis: one was a four-door model that was registered to him and the other was a two-door model that was registered to his wife. DX 13 were copies of photographs of the cars. One photograph depicted the four-door Infiniti that Respondent drove and the other depicted the two-door.

During a December 13, 2009, surveillance, Rothenbucher observed Respondent enter Rockwell's Bar and Lounge in Brooklyn, stay there for approximately 20 minutes, come out with another male, and drive to a second location where they picked up an unidentified female.

Rothenbucher observed what he believed to be sexual activity taking place among the three of them on the street. Respondent subsequently dropped off the female at a nearby corner.

Rothenbucher testified that Respondent frequented Rockwell's, usually on late Sunday nights into early Monday mornings. On Sunday nights at Rockwell's, there were parties geared for men, known as "jump off" parties, promoted by Person E. At these parties, there were scantily clad women who engaged in sexual acts. On multiple occasions, undercover investigators were solicited by these women for sex acts.

Checks conducted by Rothenbucher in Department databases came back with multiple hits for Rockwell's for narcotics-related activity.

During the course of the investigation, Rothenbucher also observed Respondent at a known prostitution location on Broadway in Brooklyn. At an official Department interview, Respondent admitted to being at prostitution locations. He did not take any police action.

Pursuant to the investigation, a female undercover officer (UC) known as Candy "bumped" Respondent, meaning that she made what appeared to be casual contact when it actually was done by design. Candy and Respondent exchanged telephone numbers. There were numerous controlled phone calls to Respondent thereafter. In addition, a male UC known as Thomas spoke with Respondent about getting women for a party at a Holiday Inn hotel in Brooklyn.

On January 24, 2010, a search warrant executed at Rockwell's resulted in seven arrests for crimes including prostitution, promoting prostitution, and the sale of marijuana. Rothenbucher was present during interviews of two of the individuals who were arrested, Person E and Person F, a bouncer. Rothenbucher learned from the interviews that, aside from Person E and Person F, Respondent associated with several individuals who engaged in criminal

activity. These individuals included Person C and several women who worked as prostitutes: Person G, Person D, and Person H. (The Department sought to produce all of these witnesses, except Person G and Person H, who lived out of state. It was unable to do so).

Person D previously had been arrested for prostitution. In a March 31, 2010, interview, Person D told Rothenbacher that she met Respondent approximately a year and a half earlier and they became friends. She believed that Respondent protected people, but she was not too specific as to what she meant. Person D observed him with a firearm on his person on at least one occasion.

At one point, Person D gave Respondent some of her money to hold because she had a drug problem and did not trust herself with the money. Person D told Rothenbacher that Respondent drove her to various locations like Rockwell's to work, and that on one or two occasions Respondent observed her in possession of cocaine and took it from her and threw it away in an attempt to help her get clean. Person D last had contact with Respondent around the time that the search warrant was executed at Rockwell's. Respondent was aware at the time that the warrant had been executed by IAB.

In his official Department interview, Respondent admitted that he had a relationship with Person D. He admitted to driving her to various locations, including Rockwell's. He also admitted that at one point he found her in possession of cocaine, removed it from her, and stopped speaking to her at some point thereafter. Respondent stated in the interview that while at Rockwell's he observed scantily clad women performing sex acts, he had been approached by one of the women, and he heard or smelled on at least one occasion marijuana being used in the location. He did not take any police action.

At a May 18, 2010, proffer session held at the Kings County District Attorney's (DA) Office, Person E stated that he met Respondent three years earlier at Respondent's bachelor party. Respondent, who assisted with problems at Rockwell's, arrived quite often at the club with Person D. Respondent did not get paid for the work he did, but Person E described his role as "pseudo security . . . in that he kept the girls kind of in line." According to Person E, Respondent acted like a pimp. Person E believed Respondent might be a sex addict. When Person E spoke to Respondent after being arrested, Respondent mentioned something about IAB being involved.

Person G's name came up in one of the wiretapped Person C conversations. In his official interview, Respondent stated that he met Person G at Rockwell's and they had a sexual relationship for a few months, but he did not know that she worked as a prostitute until after the relationship ended and she asked him for assistance in getting away from her pimp. Respondent was unable to help her in that endeavor.

At a May 6, 2010, proffer session, Person F stated that he met Respondent five or six months earlier. Person F knew Respondent as "Batman" and saw him arrive at Rockwell's most of the time with Person D.

Rothenbucher testified that Person C was a pimp and at one point was arrested by Auto Crime for possession of firearms. In his official interview, Respondent at first stated that he spoke on the telephone with Person C once or twice, but subsequently admitted that they had more frequent contact. Respondent heard that Person C had been involved in a shooting in the recent past. Respondent initially denied that he spoke to Person C after Person C's arrest, but subsequently admitted that they had spoken.

Rothenbucher stated that Person H worked as a prostitute. She was present in the car when investigators conducted a controlled car stop of Respondent. In his official Department

interview, Respondent stated that he recalled picking up Person H at Rockwell's and driving her home on the day of the stop, but he did not know her background.

According to Department records, Respondent had a location [REDACTED] [REDACTED] listed as his residence. When Rothenbucher ran in the Department of Motor Vehicles (DMV) database the license plate for the four-door Infiniti, however, the check came back with an address [REDACTED]. A NYSPIN check (see DX 14) showed that an Infiniti and an Audi, both in Respondent's name, were registered in [REDACTED]. In a conversation with a representative from Respondent's auto insurance provider, Allstate, Rothenbucher learned that Respondent saved \$1,797.40 every six months by registering the vehicles upstate rather than at the [REDACTED] address (see DX 15, letter from Allstate, indicating that policy became effective in June 2007). When asked about this at an official Department interview, Respondent said something to the effect of, "I forgot to change that." Respondent also conceded that it was cheaper to register and insure a vehicle upstate [REDACTED].

On cross examination, Rothenbucher agreed that Respondent's full name was never specifically mentioned during the wiretapped conversations with Person C. In one of the conversations, a subject of the investigation, Person I, stated, "I got my man. He is a DT, so it will be all right." After arrests were made in that Auto Crime case, another defendant, Person J, stated that guns were supposed to go to a possible member of the service called Monty, a black male with tattoos on his arm and whose picture hung in a tattoo parlor on Sutter Avenue. Rothenbucher never asked Respondent if he had any tattoos. An assistant district attorney informed Rothenbucher that he believed firearms were to be delivered to an unidentified Jamaican male who went by the name of Person K. Rothenbucher believed, though, that the Department identified Respondent by telephone number, not by name.

At a September 8, 2009, proffer session, Person C stated that he did not really speak to Respondent unless he was in trouble, the last time he asked Respondent for help was when he was involved in an incident with his girlfriend, Respondent was a good guy whom he did not know to be involved in anything illegal, and Respondent was probably unaware of his arrest, as the last time they had spoken was in the beginning of August. At a second proffer session, held on October 12, 2009, Person C stated that he had known Respondent for approximately five years, Respondent attended jump off parties at Rockwell's, he observed Respondent solicit and engage in sex with prostitutes who attended the parties, and when he asked Respondent if he was a pimp, Respondent replied that he "ran one girl named Person D." According to Person C, Respondent got rid of Person D after she started using cocaine. Rothenbucher agreed that Person C, believing that the DA's Office might go easy on him if he provided "good information," had motive to lie at the proffer sessions.

Rothenbucher testified that at a May 6, 2010, proffer session, Person F stated that Respondent went to Rockwell's three out of four Sundays a month, arriving there between 0000 and 0030 hours and leaving between 0300 and 0400. Respondent usually arrived with Person D.

Rothenbucher admitted that at no point was Respondent observed soliciting prostitutes. Because Respondent's car windows were tinted, however, investigators could not see what took place inside the car. Nobody who Rothenbucher interviewed in this investigation ever told him that Respondent took money for the purposes of promoting prostitution. While Person H was in Respondent's car at the time of the controlled stop, investigators never observed her engage in prostitution. She had an arrest record for prostitution, however.

During observations of Respondent inside Rockwell's, he was observed sitting at the bar drinking. No investigator ever reported seeing Respondent act as a pimp, take money from a

dancer, or solicit sex while inside the club. The investigation revealed that sex acts were performed in the upstairs disc jockey (DJ) booth. Investigators bought cocaine and marijuana in the club, but Respondent was not present when these drug transactions occurred. Similarly, Respondent was not present when an investigator received a lap dance and the dancer pulled down her bottom garment. When investigators interviewed the dancers, most said that they did not know Respondent.

At the May 18, 2010, proffer session, Person E stated that while he used to call pimps to have them “bring their girls to the club,” no pimps were allowed inside the club. Person E said that Respondent entered the club for free and only worked when a problem occurred. When a problem arose, Respondent would keep order within the club. According to Rothenbacher, Person E described Respondent as having “an aura as a pimp . . . in essence, he was a pimp because ... he had ... free reign in the club He didn’t actually say he pimped girls. He said he believed he was like a pimp.” Person E did not say anything about Respondent pimping women or exchanging money for the purpose of furthering prostitution. While Person E stated that Respondent had sex with women in the DJ booth, he did not know if there was any payment involved.

Both Person E and Person D described Person D as a dancer, not as a prostitute. According to Rothenbacher, this was a euphemism for prostitute. He conceded that there were women who dance in strip clubs that did not engage in prostitution. At no point during the investigation, Rothenbacher said, was Person D recorded engaging in prostitution activities. He conceded that she did not have an arrest record for prostitution, at least according to the databases searched. In her March 2010 interview, Person D did not tell Rothenbacher anything about Respondent being her pimp. She did not indicate that the transfer of money was related to prostitution. Person D told

Rothenbucher that she gave Respondent the money because she had a drug habit, was in debt, and was bad with money. She stated that she allowed Respondent to drive her from place to place for work so that she could save money on cab fare.

Person D described Respondent as a good guy who was always trying to help her. She denied that they had a sexual relationship. She told Rothenbucher that Respondent was aware that Rockwell's was under investigation. Respondent and Person D did not have contact after IAB raided the club in January 2010.

In a second interview, held on April 9, 2010, Person D stated that she used to be a prostitute in Manhattan and as a result was arrested numerous times. Rothenbucher explained that he might not have been able to review Person D's arrest record in Department databases if her arrests were sealed. Cases that were dismissed, for example, would not have been accessible to him.

Person E told Rothenbucher that Respondent on occasion brought other members of the service to the club, and that Respondent did not seem too bothered when they discussed IAB's raid of the club. Rockwell's was a licensed establishment.

Investigators performed surveillance of a prostitution location at Broadway and Madison Street in Brooklyn. They were unable to establish that Respondent engaged in prostitution, solicited prostitution, had prostitutes working from him, or received money from prostitutes working in that area.

When investigators stopped Respondent's car and found Person H in the vehicle with him, there was a second woman in the car also. Respondent was not found to be engaged in misconduct at the time of the stop. The stop occurred on December 6, 2009. After Person H was arrested for prostitution on October 18, 2010, she did not pick out Respondent in a photo array. Person H stated that she did not know anybody by the name of Monty or Person D.

According to Rothenbucher, when the UC known as Thomas (Person L) asked Respondent to provide dancers for a party, the conversation at one point turned to the dancers performing anal sex for money. Rothenbucher conceded that the majority of the contact between Respondent and Thomas was initiated by Thomas. It was also Thomas that directed the conversations to the subject of strippers the majority of the time. Respondent never appeared at the hotel at the time of the supposed party and, thus, never actually provided women for prostitution-related activities.

Respondent never appeared at a meeting that was supposed to take place with UC WXYZ who was also known as Candy, at Barosa Restaurant. At no point during Respondent's conversations with Candy did Respondent use the word "prostitute" when he discussed providing employment opportunity for her. Respondent did tell her that he would be her "daddy" or "banker." Based on their conversations, Rothenbucher concluded that Respondent wanted to engage in prostitution activity with Candy. Rothenbucher explained that while there was no explicit evidence that Respondent was engaged in prostitution activity, the evidence led investigators to that conclusion.

The Allstate representative informed Rothenbucher that, according to records, Respondent's vehicle was garaged in [REDACTED] Multiple surveillances, however, showed that Respondent in fact garaged the car at his [REDACTED] address. These surveillances were conducted between early 2009 and 2010. Rothenbucher never saw the contract between Respondent and Allstate.

On re direct examination, Rothenbucher testified that surveillances that were conducted at Rockwell's on Sunday nights revealed that "it was pretty clear that there were some activities that were going on that were not above board." It was a violation of Department guidelines for a

member to patronize an establishment that was engaged in criminal activities such as prostitution.

Department policy dictated that when a member observed an individual in possession of narcotics, the member was supposed to take some kind of police action.

Person M, who also worked as a prostitute, told investigators that Person D worked as a prostitute.

When Respondent spoke with Thomas about organizing a party, there was discussion about Respondent providing women who would provide oral sex, intercourse and threesomes. Respondent stated a price range. In Respondent's conversation with Candy, she talked about dancing for money and performing sexual acts in addition to the dancing. Again, Respondent made mention of a dollar amount depending on the kind of activity Candy performed. Respondent also told Candy that he wanted to personally drive her to a location where a threesome was supposed to take place.

[REDACTED] is outside of the residence counties. Respondent, in sum and substance, stated at his official interview that he insured his car in [REDACTED] rather than [REDACTED] in order to save money.

On re-cross examination, Rothenbucher testified that while undercover officers bought cocaine in the club, Rothenbucher did not know if Respondent was aware that sales were taking place. Similarly, Rothenbucher did not know if Respondent was aware of sexual acts being performed inside the club. Rothenbucher noted, however, that criminal activity occurred inside the club "on every Sunday night almost like clockwork," and that Respondent was present in the area where criminal activity took place. Specifically, undercover officers observed Respondent sitting at the bar and also observed women performing sex acts at the bar.

Upon questioning by the Court, Rothenbacher confirmed that undercover officers in Rockwell's got women inside the club to agree to perform intercourse or oral sex in exchange for money.

Sergeant Kevin Prentice

Prentice previously was assigned to IAB. On November 1, 2009, he and Lieutenant Patrick Hickey conducted surveillance outside Respondent's [REDACTED] residence. At 0000 hours, they observed the white Infiniti that was registered to him. They followed Respondent as he drove to another street in Brooklyn and picked up a passenger. They lost sight of the car at 0046 but next saw it at approximately 0130 parked in the vicinity of Rockwell's. At 0430, they observed Respondent exit the club.

At 1148 hours on November 15, 2009, Prentice and Hickey conducted another surveillance of Respondent. At Grand and Maujer Streets in Brooklyn they observed Respondent's Infiniti again. They observed Respondent exit the vehicle, walk toward the Borinquen Plaza housing development, and enter a building. Respondent was supposed to meet the undercover officer known as Candy at that location. DX 16 was the video recording of the surveillance, which continued into the early hours of the following day.

At 0010 hours on December 20, 2009, Prentice and Hickey observed Respondent enter Rockwell's. At approximately 0350, they observed him leave the location with an unknown black female. Respondent and the woman drove to the corner of Pitkin and Howard Avenues in Brooklyn and entered a building. Respondent and the woman left the location a few minutes later.

Prentice was present at Person C's September 2009 proffer session. Person C stated in the session that Respondent was a good guy, he called Respondent only when he was in trouble, at one point that year he called Respondent for help after a domestic incident with his girlfriend, and the last time they spoke was in the beginning of August.

Sergeant Iladen Laureano

Laureano previously was assigned to IAB. On November 16, 2009, he conducted surveillance of Respondent. At 0030 hours that day, he observed Respondent hug the bouncer at the door at Rockwell's and enter the club. Respondent exited at 0300 or 0330. DX 19 was a video recording that Laureano took of Respondent entering Rockwell's.

Sergeant James Howard

Howard previously was assigned to IAB. On December 7, 2009, at 0445 hours, he conducted a car stop of Respondent after Respondent ran a red light. There were two women with Respondent. Howard later learned that the woman in the front passenger seat was Person H, who previously had been arrested for prostitution. DX 30 was a recording of the car stop.

On cross examination, Howard claimed that the women in the car were dressed "provocatively." This meant that they were "dressed with a lot of skin showing."

Lieutenant Patrick Hickey

Hickey previously was assigned to IAB. On January 11, 2010, he observed Respondent enter Rockwell's at 0325 hours. Respondent was accompanied by a woman. Respondent and the woman remained in the club until approximately 0435.

On September 30, 2009, Hickey was present for Person C's proffer session at the Queens DA's Office. Person C stated that he was a pimp and used the name Person C. Person C knew Respondent and said they had met through a Brooklyn pimp named Heaven. According to Person C, Respondent engaged in sex acts with prostitutes at Rockwell's and was "trying to run" a prostitute named Person D. Respondent "was in the process [of] getting rid of" Person D because she got hooked on cocaine and was spending the money that had she made.

On cross examination, Hickey confirmed that Person C did not implicate Respondent in any criminal conduct during a previous proffer session. Person C had been arrested for firearms, and Hickey confirmed that Person C's credibility was in question, as defendants in proffer sessions usually were attempting to get lighter sentences.

Sergeant Larry Flunory

Flunory, a 22 year member of the Department assigned to IAB, participated in surveillances of Respondent and conducted undercover work inside Rockwell's. At approximately 0430 hours on September 1, 2009, he conducted surveillance of Respondent in the vicinity of Broadway and Halsey Street, an area known for prostitution. Respondent, who was using the Infiniti registered to his wife, was double parked for approximately an hour. Flunory observed Respondent have a conversation with a woman Flunory believed was "walking the strip" as a prostitute. Flunory thereafter observed Respondent in another location in the same area. In total, Flunory observed Respondent move locations three or four times without ever parking the car. DX 17 was a video recording of the surveillance. DX 18a-e were photographs that Flunory took that day: a-c were photographs of women working as prostitutes, and d e were photographs of the vehicle Respondent was driving.

At approximately 2230 hours on November 20, 2009, Flunory conducted an undercover operation at Rockwell's. He described the bar area as approximately 30 feet wide by 45 feet long. At the end of the bar area there was another area. This dimly lit area was where women conducted their "dancing business" and behind it was where sex was performed. This area could be observed from the bar. To the left was a door that led to an alley where, every time Flunory went to it, he smelled marijuana. On the second floor was the DJ booth, which was another area where women would ask men to go to have sex.

When Flunory entered the club, he had a conversation with an individual known as Person N greeted all of the customers as they walked inside. He asked Flunory how he knew about the club and if he had been there before. As it had been described to Flunory previously, Rockwell's was akin to a members-only club and everybody there knew one another. Person N told Flunory that Sunday nights after 2300 hours was a good time to come to the club because at that time men could do whatever they wanted, including "basically" having sex with prostitutes. Flunory observed a bowl that contained 200 or 300 condoms on the bar table.

At approximately 2000 hours on December 3, 2009, Flunory conducted another undercover operation at Rockwell's. On that day, Person N gave Flunory his cell phone number and told him to call if he had any problems. Person N, who was one of the owners of the club, explained to Flunory that they only invited people they knew to the club on Sunday nights because they did not want any problems.

On December 6, 2009, Flunory returned to the club with Lieutenant Adam Croom and an undercover officer from the DA's Office. Flunory observed barely-dressed women exposing themselves, gyrating on the area of men's penises, and asking for money in exchange for sex. One woman approached Flunory and told him that he could have sex with her for \$80. In

addition, one of the dancers gyrated on his penis area and kept placing his hands on her vaginal area. Two women also offered to go to a neighborhood hotel with Flunory and Croom in exchange for \$200. While inside the club, Flunory observed Respondent have a conversation with a man known as Person O, who sold beer tickets. Respondent then exited the club with two women and drove away.

On December 13, 2009, Flunory returned to Rockwell's. Women were offering sex in exchange for money. One woman told Flunory that she would provide oral sex for \$50 and sexual intercourse for \$100. Two other women also offered to have sex with Flunory in exchange for money. The sexual acts that were offered were supposed to take place in the back room or DJ booth.

Flunory returned to the club the next day with a UC from the DA's Office. A woman danced with him, gyrating her buttocks on his penis area. She then told him that she would provide oral sex for \$50 and sexual intercourse for \$110. The woman gave Flunory her telephone number.

While at Rockwell's on January 10, 2010, Flunory went out a side door and found people waiting on line to purchase marijuana and cocaine. Flunory purchased marijuana from a man, and later in the night he purchased cocaine from a woman who offered to have sex with him. He asked the woman who sold him cocaine about Person D, and the woman told him that Person D was "stupid for having a pimp" since it was unnecessary to have a pimp at that location. The woman also thought that Person D was stupid for having a drug problem. At approximately 0300 hours that day, Flunory observed Respondent sitting at the bar "like he own[ed] the place." Flunory explained that while most of the men ordered drinks and went straight to the back area to interact with dancers and prostitutes, Respondent remained at the bar and watched the dance floor. From

where he was sitting, Respondent would have been able to view half-naked women. Flunory explained, “[N]one of them were totally nude, but you would see breasts, vaginas, definitely see buttocks, and you see girls standing on their hands and guys humping them up and down against the wall, on the floor, all over the place.”

Flunory assisted in the execution of a search warrant at Rockwell’s on January 24, 2010. The warrant resulted in multiple arrests, including arrests for prostitution.

Flunory also was present at several controlled calls that were made between Candy and Respondent. In addition, Flunory used Candy’s cell phone to send text messages to Respondent on November 3 and November 4, 2009, posing as Candy. Respondent told “Candy” that she could make extra money on Sundays.

On cross examination, Flunory testified that Respondent’s Exhibit A was a photocopy of the layout of Rockwell’s, as drawn by Flunory. He testified that as he walked into the club, he encountered at the door somebody who collected money and distributed beer tickets. Toward the rear of the club there was a curtain, usually kept drawn. On Sunday nights, however, the curtain was pulled back completely, exposing the back area and elevated DJ booth. Flunory testified that it was approximately 45 feet from the front of the club to the curtain and another 15 feet from the curtain to the DJ booth. The back area of the club was where half-dressed women danced and gyrated. The women also led men to the back area and the DJ booth to perform sexual acts there. These areas of the club were dark and could not be seen from the general public area at the front of the club. According to Flunory, while Respondent was seated at the bar he would have been able to see semi-nude women exposing themselves and gyrating on men, but he would not have been able to see any sex acts taking place.

When Flunory purchased marijuana at the club, the transactions always occurred outside in the alley. It was inside the bar area, though, that Flunory asked the woman for cocaine on January 10, 2010. Flunory gave the woman money. The woman brought the money to a man in the dance area and then returned to the bar with drugs for Flunory. Flunory admitted that it would have been too dark for Respondent to have seen the drugs.

Concerning the September 1, 2009, surveillance, Flunory conceded that never before had he seen the woman who walked over to Respondent's car and spoke to him. Flunory explained that he knew the woman was a prostitute because he observed her "walking the strip on Broadway." He also saw her exit a vehicle with her underwear exposed. Flunory could not recall how long the conversation lasted.

Flunory testified that, like the other men at the club, he would stand against the wall and ask women for dances. Sometimes the women would ask for money up front and other times they would not say anything. After the song ended, the women would ask for \$10. Sometimes after a dance, Flunory would bring up the topic of sexual activity, and sometimes a dancer would suggest that they go to the back room together. Every dance was different; there was no set pattern. While all of the dancers agreed to accept money in return for rubbing their genitals or buttocks on Flunory's with clothes on, or for allowing Flunory to put his hand on their genitals or buttocks, some said, "I don't have sex."

According to Flunory, Respondent was committing criminal association by talking with Person O on December 6, 2009, because Person O worked at a club that was operating illegally. Although Flunory had no independent knowledge that the two women with whom Respondent drove away had engaged in criminal activity at Rockwell's, Flunory concluded that they were working as prostitutes. He explained, "My time going into the club, . . . I never observed two girls just hang

out. All the women, except the two bartenders, were engaged in activity that was not lawful, and that was exchange of money in exchange for touching private parts and having sex.” Respondent would have known that Rockwell’s was an “illegal social club” because while Respondent was at the club, he was within a couple of feet of this touching, which was underneath the women’s clothes. He would have been able to see the dancers gyrating, the exchange of money, and “all the guys are laid up against the wall while the girls are right between their legs.” Flunory continued, “Some girls, their heads are between the guy’s crotch. There are girls on their hands and legs are split in a V and they have no underwear on. If [Respondent] didn’t see that, then he is not a police officer. That’s my opinion. He knows what’s going on.”

Flunory testified that Respondent committed misconduct on January 10, 2010, by being in a bar where prostitution was occurring.

At no point did Flunory observe Person D engage in prostitution activity.

When Flunory acted as Candy in the November 2009 text conversations, he told Respondent that “she” was “still making that paper.” Flunory testified that he was turning the conversation to the topic of money. Flunory subsequently texted, “I have to find work in the city.” Respondent did not respond to this, so ten minutes later Flunory texted him, “What are you doing?” Flunory subsequently texted, “You know any place I can make that paper in the city.” Respondent replied, “Sundays,” and “Candy” asked how much money “she” might take home. Respondent replied, “[D]epends if you make money on da side.” Flunory then texted, “Are you going to look out for me? What do I have to give you?” Respondent replied, “Call me, we’ll talk.” Flunory testified that he interpreted Respondent’s text messages to mean that he was offering Candy an opportunity to work on Sundays.

On re-direct examination, Flunory testified that he saw close to 10 women working as prostitutes in the area where he observed Respondent on September 1, 2009.

Flunory said that a typical dance at Rockwell's involved the dancer taking "her private part and rub[bing] it against yours, and depending on the dancer, she may take your hand and place it inside her pants or on her breast, skin to skin." After a dancer collected payment for the dance, she would take the conversation "to the next level of going upstairs to the DJ booth area or going on the side for sex." He never saw a female patron at the club on a Sunday.

Upon questioning by the Court, Flunory testified that Respondent's conversation with the woman on September 1, 2009, lasted approximately five minutes.

Flunory never went upstairs to the DJ booth in Rockwell's. He did, however, see dancers expose their vaginal areas to public view. Although Flunory first said, "There were girls that I recall, remember times when they would be totally nude, but that was rare . . ." he later stated that women never were completely nude in the bar area. He added, "I remember a girl putting her hands on the ground, and her legs up in the air, and split her legs while a guy's head was between her legs. And I remember a girl placing the guy on a chair while she was nude, and she was rubbing against him." Respondent was present in the club while Flunory saw patrons touching dancers' exposed breasts. 90% of the time the dancers wore thongs. As far as Flunory saw, the men in the club remained clothed.

On continued re-cross examination, Flunory confirmed that on the night he saw Respondent at Rockwell's, there were women, 15 to 20 feet away from Respondent, who were taking off their clothes to entice men to pay for dances. He now said "there were women there that were totally nude that day."

Undercover Officer No. WXYZ

UC WXYZ, an 11-year member of the Department, had worked as an undercover for six years. On October 22, 2009, she was assigned to conduct an integrity test on Respondent. The objective of the test was to approach Respondent and obtain his telephone number. She successfully exchanged phone numbers with Respondent after she stopped to ask him for directions. DX 20 was a video recording of her interaction with Respondent on that day.

Soon after exchanging numbers, UC WXYZ and Respondent started to exchange text messages. There were also controlled telephone calls during the period between October 28 and December 16, 2009.

DX 21a and b were the recording and transcript of a November 4, 2009, telephone call. In the call, UC WXYZ (taking on the persona of "Candy") told Respondent that she needed to make money. She informed him that she did "more than just dance," "suck[ed] dick in the back" at her current place of employment, and was "willing to do whatever." Respondent told her he could help her make money and that he knew of a few places. He spoke of one place in particular where he "bounces" on Sundays. He described this place as a legitimate bar, but he had a friend who promoted "underground aspects" there. He told her that at this bar she would be able to do "wall dances and shit like that, you can do, you know, everything." He said that "everything goes" at the bar and that he would introduce her to his friend.

Respondent told UC WXYZ that he was interested in getting to know her and go out on a date. UC WXYZ replied that she was not interested in a relationship and just wanted to make money. Respondent then told her that he did not understand exactly what she wanted from him. He asked her if she wanted "a daddy." He also asked her if she used drugs and told her that "a

person [he] was dealing with had a problem with powder." UC WXYZ told Respondent that she smoked "weed a little bit," and Respondent replied that he was not worried about that.

UC WXYZ testified that when Respondent asked her if she was looking for a daddy, she took it to mean that he was asking to be her pimp. She explained that she based this on the context of their conversation, the fact that she was letting him know that she was willing to perform sex acts for money and was looking for his assistance. Respondent and UC WXYZ arranged to meet in person the following Friday at Barosa Restaurant in Brooklyn. DX 26b was the transcript of a November 5, 2009, telephone call during which they confirmed their Friday meeting (see also DX 26a, recording). Respondent canceled the meeting, however, telling UC WXYZ that he had worked late the night before.

DX 26c was the transcript of a November 12, 2009, call (see also DX 26a, recording) during which UC WXYZ told Respondent that she preferred black men but that they did not pay. Respondent replied that this was because "brothers know the rate." They made plans to meet at the restaurant the next day, but the meeting never took place.

DX 22a and b were the recording and transcript of a November 14, 2009, call. In the call, UC WXYZ asked Respondent where she would be working. Respondent indicated that he could get her work at a couple of clubs. One of these was in downtown Brooklyn. UC WXYZ asked Respondent, "So if I go in these clubs and have sex and give blow jobs, whatever, I'll come out and you're going to be there or you're going to be with me or how is it going to work?" Respondent replied that sometimes he would be present and other times he would wait outside. When UC WXYZ asked Respondent how much money he would make off of her, he replied that it depended on how well she did. UC WXYZ also asked, "Well, if I make, like say for example \$100 for a blowjob, now how much do you get," and, "All right, if I make \$500, what will you take?"

To this last question, Respondent replied that she would keep \$300 of the \$500 she earned and that he would hold her money and give it to her when she needed it. He also told her that he was protecting two other women. UC WXYZ took this to mean that he was acting as a pimp to those women.

DX 26d was the transcript of a November 15, 2009, call during which Respondent and UC WXYZ made plans for him to pick her up that night in the area of Graham Avenue and Maujer Street and take her to a club. When Respondent arrived at that location, UC WXYZ informed him in a second call that she could not see him because she was having problems with her roommate (see DX 26e, transcript of second call, dated Nov. 16, 2009; DX 26a contained recordings of both the Nov. 15 and 16 calls).

DX 23a and b were the recording and transcript of a December 1, 2009, call. In the call, Respondent told UC WXYZ again that he would manage the money that she earned. He told her that she could make \$400 or \$500 a night depending on her work ethic. He advised her that she could work in legitimate places as well. He told her, "I'm going to try to link you up with those legitimate places and try and get you inside some of these legitimate places. So that way you can not only have a place to go when things are looking good for the underground." When UC WXYZ asked Respondent how he would feel about her having sex with three men at the same time, he replied that she would have to let him know beforehand because it would be a risky situation.

DX 24a and b were the recording and transcript of a December 2, 2009, call. In the call, UC WXYZ asked Respondent, "So what's the going rate, like, if I'm giving blowjobs or I'm having sex with these guys?" Respondent replied that she should not accept anything less than \$80 or \$100 for "full service." Respondent also told her that he would be there with her while she was working and that he would make sure she kept some of the money she earned.

DX 25a and b were the recording and transcript of a December 16, 2009, call. In the call, UC WXYZ asked Respondent if he had any women who could work at her friend Thomas's party. She told Respondent that Thomas wanted three women for a party of eight men. She also told Respondent that she already had informed Thomas that the women charged \$75 for oral sex and \$125 for sexual intercourse, plus a \$150 per hour booking fee. Respondent confirmed that the prices sounded about right. The party was to take place at a hotel in Brooklyn after the holiday season. Respondent told UC WXYZ that he probably could get Thomas what he wanted, and UC WXYZ gave him Thomas's phone number. Respondent never set up the party, however. "Thomas" actually was an undercover officer with the Department.

On cross examination, UC WXYZ testified that the first time she met Respondent, she told him that she was a dancer. Based on their initial interaction, she believed that Respondent was attracted to her and interested in having further contact with her. He did not say anything at the time to indicate that he was a pimp. In the November 14, 2009, phone call, it was UC WXYZ who spoke about sex and money. Respondent merely responded to her inquiries. UC WXYZ conceded that it was possible Respondent was lying to her because he wanted to have sex with her.

UC WXYZ agreed that during the course of her investigation there was no overt act to suggest that Respondent was acting as a pimp. UC WXYZ based her determination that he was a pimp on the conversations she had with Respondent. In their conversations, Respondent repeatedly expressed interest in seeing UC WXYZ in person. He never specifically stated that he wanted UC WXYZ to go out and make money as a prostitute or that he was going to be her pimp. UC WXYZ never saw Respondent act as a pimp. In fact she never saw Respondent in person after their initial contact.

On re-direct examination, UC WXYZ testified that it was the conversation about “underground locations” that led her to believe that Respondent wanted to be her pimp. She explained, “According to underground location, what I believe is that they do sex acts, and you do the sex acts and you get money for it.” In their conversations, Respondent also told UC WXYZ how much to charge for certain sex acts and that he was going to protect her while she worked. Based on their conversations, UC WXYZ perceived that Respondent’s interest in her was to make money.

On re-cross examination, UC WXYZ conceded that it was she who led their conversations to the topic of sex acts and the exchange of money.

On continued re-direct examination, UC WXYZ explained that while it was she who suggested that Respondent would keep some of the money that she earned by performing sex acts, Respondent replied to her questions with the response that she would keep \$300 of every \$500 she earned.

Person L

Person L, of IAB, was assigned to conduct controlled telephone calls to Respondent between December 22 and December 28, 2009. DX 27a and b were the recording and transcript of a December 22, 2009, call. In the call, Person L, acting as “Thomas,” told Respondent that he wanted three women for a party at a Brooklyn hotel. He asked about “high-end girls versus low-end girls” and confirmed that he was getting the “\$150.00 girls.” He told Respondent that he previously had thrown a similar party where there was a conflict between one of the women and a guest over anal sex. He clarified to Respondent that he was “looking for just oral sex, straight up sex,” and that he wanted to provide the guest of honor with a threesome. Respondent

confirmed that the women he would send would be able to provide what Person L was asking for and that additional services might cost extra. When Person L asked if he would be giving money to the women or directly to Respondent, Respondent replied, "I'll probably be there or if I can't be there just give it to them. Or . . . I'll probably be able to just drop 'em, so you can probably just give it to them, it'll get back to me either way." Respondent later stated, "Normally, I come by and collect the booking fee, but it's all right. I trust these girls, so it's all right."

DX 28a and b were the recording and transcript of a December 23, 2009, call. In the call, Respondent confirmed to Person L that he would provide three women for the hotel party on December 28, 2009. Person L and Respondent spoke again about the party during a second call later in the day, but this was not recorded.

DX 29a and b were the recording and transcript of a December 28, 2009, call. Respondent told Person L that he would not be providing women for the party. He blamed a missed meeting with Candy for his failure to provide the women.

On cross examination, Person L conceded that Respondent never specifically stated in their conversations that he pimped out Candy to make money. It was Person L who initiated contact with Respondent and brought up the subject of sexual acts. In response to Person L's inquiry, Respondent told him that he could provide women for sexual acts. Respondent acted very professionally during their conversations.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, an eight-year member of the Department, previously was assigned to the 73 Precinct. He conceded that at times he worked in Operation Losing Proposition, which was a program to deter prostitution. On those days, he worked in plainclothes and drove around until he was approached by a prostitute.

On July 26, 2009, Respondent was assigned to work overtime at the Old Timers detail. He observed Person A and Person B under a tree at the corner of Eastern Parkway and Thomas S. Boyland Street. Person A was lighting a flame, and Parham instructed Respondent to approach her. Respondent smelled marijuana, and he removed a marijuana cigar from Person A's hand. Person A placed her keys on the windshield of the Department van that Respondent was driving.

Respondent briefly spoke with Person A to see where she got the marijuana from. She seemed reluctant to speak to the police in front of Person B, so Respondent asked her if she would be willing to become a CI. Person A expressed interest in the program, and Respondent told her to write down her contact information.

Parham instructed Respondent to issue Person A a summons. Respondent testified that he tried to run Person A's name over the MDT, but the NYSPIN system was down. He believed he tried to conduct a warrant check over the radio, but again NYSPIN was down. He relied on Person A's photo identification, an out-of-state driver license or permit, to prepare the summons.

Respondent cited a Penal Law section, § 221.05, on the summons. He had used this on previous marijuana summonses. After issuing the summons, he returned directly to the 73 Precinct station house and vouchered the marijuana.

Upon Respondent's arrival at the station house, he noticed that Person A's keys were still on the van's windshield. Because he had her contact information, he was able to call her. Person A asked if he would bring the keys to her. Respondent informed Parham about the keys.

Respondent left the command and drove approximately four blocks to meet Person A at the corner of Howard and Ralph Avenues. He conceded that he was dressed in plainclothes and was driving his personal vehicle.

Respondent got out of his car and removed Person A's keys from his pocket. Person A asked him where her mace was, and he informed her that it was not permissible for her to carry mace. When she accused him of stealing the mace, Respondent replied, "Well, if I stole your mace and I stole your keys, why don't you just come back to the precinct and get your property." Respondent then got back in his car and returned to the command. His exchange with Person A lasted three to five minutes. At no point did he display his firearm in his waist or tell Person A to "back the fuck away." Respondent claimed that his everyday practice was to leave his guns at work.

At the command, Respondent vouchered Person A's keys and mace holder. He was instructed by the desk officer that the mace could not be vouchered because it was combustible, so at her instruction, he discarded it.

Respondent subsequently prepared an overtime slip. He could not recall to whom he handed the slip that night, but Parham ultimately submitted it. Parham did so for all conditions team overtime slips. Respondent did not sign out at the end of tour because the overtime slip was a sufficient method of signing out.

Respondent testified that he first went to Rockwell's when his friends threw him a bachelor party at the location. He subsequently patronized the club for the purpose of getting a

drink. Some nights there was a “bikini night” at the club. According to Respondent, he never saw women inside the club engaging in sexual activities with male customers for the purpose of prostitution. Nor did he ever see anybody deal marijuana or cocaine inside the club. Respondent neither had women working for him inside the club nor did he ever collect money from women as a result of activities that occurred at the club. He never promoted female dancers or received a booking fee in return for this service. Respondent never saw any act occur inside the club that would have required him by Department policy to take police action.

Respondent knew Person C through a mutual acquaintance. Other than this connection, he did not associate with Person C on a regular basis. They met each other in person just one time, three or four years ago, and they had telephone contact only when Person C initiated it. The wiretapped conversations that he had with Person C in August 2009 were about a woman who danced at Rockwell’s. Respondent had met her there. The woman, whose name he did not know, wanted to be his girlfriend and to stop dancing because her last boyfriend was abusive. Respondent wanted to help the woman. He never told her that he was a pimp or that he was going to have her work as a prostitute. Nor did he ever tell Person C these things. When he used the word “bitch” in the conversations with Person C, he was not talking about a prostitute. He was just using the word as slang. When asked about the word “charge,” Respondent explained, “As far as I know, it was what was owed. What was owed because the girl had, the guy had brought her some shoes or something like that.”

About the two women who were in his car when IAB investigators conducted a car stop on December 7, 2009, Respondent testified that they were dancers. He had seen one of the women once or twice before, but he did not know their names. He did not see the women again

after that night. The women never told him that they worked as prostitutes and there was nothing evidencing that they did. Respondent never pimped the women out or paid them for sex.

Respondent confirmed that he knew Person D. She was a dancer at Rockwell's. Person D never worked for Respondent or told him that she worked as a prostitute. Respondent never saw her perform sexual services in exchange for money or collected money from her.

Respondent was experiencing marital problems and was going out a lot to get away from his problems at home. During that period, he met a number of women. He also met person E, who worked the front door at Rockwell's. Respondent knew person E as the promoter of the bikini night or "bar night" at the club. They did not socialize with each other outside of the club. Nor did they engage in business together to promote parties or book dancers. Respondent never received any sort of booking fee from person E.

While at the club, Respondent also met Person F, the bouncer. They did not socialize with each other outside of the club. Respondent did not know Person H or Person G. He did not know if any of the people with whom he had contact at Rockwell's had criminal records.

Respondent met the woman known as Candy when she approached him to ask for directions. Candy told Respondent that she was an "entertainer," specifically a "dancer," and was on her way to a party. Respondent thought Candy was attractive and told her that he was interested in getting to know her.

Respondent spoke with Candy on the telephone several times after that day. It was always Candy who initiated the calls. Their conversations were casual at first, but Candy later turned the conversations to the topic of Respondent taking her to clubs and entering into a business relationship with her. Respondent did not want to deal with her on that level. When Candy told Respondent that she wanted to perform oral sex at a club, Respondent told her that

"that's her business if she wants to do that." When she asked him at which locations she could make money, he told her that there were clubs all over the city and that she could make money anywhere. When she told Respondent that she wanted to work for him, he replied that he was not interested in that.

Although Respondent did tell Candy that he wanted to be her daddy, he did not tell her this for purposes of pimping her. He explained, "I told her I want to be your daddy, like in bed. I wanted to, you know, hey daddy, hey, . . . , spank, spank, stuff like that." He never told Candy that he wanted to pimp her or that he was going to take her out to make money.

When asked if he ever told Candy that he would take her out where she could make money and he would keep a percentage of whatever she made, Respondent testified, "She suggested to me on several occasions, . . . , if I did this, would you take some money? I go no. She said if you take that, I said no. If you did this much, I said no. So then she gets to an even higher amount and then she goes, so if anything, will you take this amount?" According to Respondent, Candy asked him four or five times about him taking a share of her earnings. Each time he said no, but Candy continued to badger him. He did not know what she wanted him to say, so he at some point just said yes to her.

Respondent and Candy never saw each other in person after their initial meeting. He sent her text messages once or twice because he wanted to have sex with her. Later on, when Candy asked to meet with him, he avoided it because he had lost interest.

Candy told Respondent that she was late with her rent and needed his help planning a bachelor party. Although Respondent did not understand why she needed his assistance, he agreed to help her. That was how he was placed in contact with "Thomas." Thomas told Respondent that he needed dancers for a party and asked about a booking fee. Respondent

testified, "I told him how much . . . a booking fee would go for if he was to try to book one because I had a bachelor party myself. I told him he would have to work that out with Candy because I wouldn't be receiving any money from this." Respondent never told Thomas that he would provide him with women, that he would hire women for the purposes of prostitution, that he would collect some money if women came and danced, or that there were certain prices for sexual acts to be performed. Respondent testified that he was not certain whether the topic of sexual acts even came up during the conversation.

Respondent never met Thomas in person. Although Thomas expected him to attend the party, Respondent did not go because he had no interest in planning a party.

Respondent testified that he owned an Audi "truck." He registered the vehicle at the address of a property he owned in [REDACTED]. Prior to registering the vehicle, he spoke to his insurance carrier. He notified them of where the vehicle was going to be garaged. While he was having marital problems, he stayed in [REDACTED] for a while and "bounced back and forth" between his residences.

On cross examination, Respondent testified that the marijuana cigar was not lit when he first saw it in Person A's hand. Parham instructed Respondent to stop Person A after they saw an amber light or flame which could have been the lighter as Person A attempted to light the cigar. It would not have been proper to charge her with criminal possession of marijuana (the misdemeanor rather than the violation) because the marijuana was neither burning nor open to public view, as he first saw it in her hand and her hand was closed. Respondent explained, "I gave her the benefit of the doubt that it wasn't burning because we didn't, she said that she tried to light it, and it wasn't burning, so Sergeant Parham looked at me and he says it's not burning, unlawful possession."

Although Person A gave Respondent a North Carolina identification card, he wrote a Brooklyn address on the summons because Person A told him that that was where she was staying.

Respondent testified that he was familiar with the protocol of signing up a CI. He had signed up a CI once before, and he told Parham that he planned on signing up Person A.

According to Respondent, there was no need for him to field-test the marijuana he removed from Person A because he was not arresting her. Because nobody was available to test the marijuana at the command, it was sent that day to the laboratory for analysis.

Respondent's overtime tour for the Old Timers detail ended at 0435 hours. Between 0435 and 0510, he changed out of uniform and went to meet Person A. He agreed that he returned Person A's keys on his own time.

Although Respondent told Person A that he did not steal the keys and pointed out to her that he was there to return the keys as a favor, she continued to insist that he stole the property. At one point, Person A and Person B indicated that they were going to call 911, and Respondent told them, "If you need to call the police, you can call the police." Respondent neither waited at the scene to await the response of on-duty personnel nor requested the response of a patrol supervisor. Instead he returned to the command to voucher the property. Respondent explained that he did this because he "didn't steal any property. I told them to come to the precinct and pick up her pink slip receipt for her property, and she can get it there."

Respondent previously had heard that Person C had been involved in a shooting. Respondent admitted that he told investigators he was aware that Person C was not a good person to be around.

Respondent conceded that Person C told him the boyfriend of the woman about whom they were speaking in the August 2009 phone calls might have been a pimp. The boyfriend's name was "Panama." The woman needed a place to stay, but was not trying to get away from her pimp. Respondent knew her for a month or two.

Respondent and Person D met through a mutual friend. While they were romantically involved, Respondent did not consider their relationship to be a particularly close one. At Person D's request, Respondent held her money so that she would not spend it irresponsibly. In addition, he at times drove her to her workplace. He drove her to Rockwell's and once drove her to a location called Angel's.

Somebody told Respondent that Person D used cocaine, but he considered it to be just a rumor. Respondent admitted telling investigators that he observed a "push rod" in Person D's bag. This was the stem of an umbrella used to push crack cocaine into glass pipes. At trial, he conceded that he "assumed that maybe she was using" cocaine.

Respondent told investigators that he went to Rockwell's 15 to 20 times, including almost every Sunday night between the fall of 2009 and January 2010. The women were wearing slingshot or bikini outfits, but "[n]othing was exposed." He observed them giving "wall dances, or I seen something like a lap dance. I would say it's like a wall dance or a lap dance. I don't know if you would call that dirty dancing. It's a strip bar or whatever."

Although Respondent was not asked directly to pay for sex while at the club, he admitted that it was suggested when women asked him questions such as, "Hey, you want to go to the back or something?" Respondent took these requests to mean that he could get a lap dance "or be touched" if he chose to pay for it. Respondent did not accept these offers because he just wanted to sit at the bar and have a drink. In his December 2010 official Department interview,

Respondent answered affirmatively when asked if anyone at Rockwell's ever asked him to pay for sex. At trial, though, Respondent contended that, "No one came to me and asked me specifically for sex. Like to exchange sex for money or anything like that." Rather, a "girl" there liked him and asked to have sex with him.

Person E sent Respondent text messages about parties that would occur at Rockwell's on Sundays, and they spoke on the phone several times. Respondent gave him a Patrolmen's Benevolent Association card. Respondent insisted that he paid the cover charge at Rockwell's "[e]very single time." He admitted, however, stating in his official interview that the cover might have been waived for him a couple of times. He testified that he meant only that while he might not have paid at the door if he did not have money on him, management probably made him pay later.

Respondent did not know Person H by name, but was able to identify her by photograph as one of the women who worked at Rockwell's. Person H was one of the women in his vehicle at the time of the December 2009 car stop.

Person G also was a Rockwell's dancer. Respondent met her there and had a sexual relationship with her. At one point, Person G told Respondent that she wanted him to be her boyfriend. He had heard that Person G had a pimp, but "it was not confirmed." While Respondent indicated at his official interview that Person G had a pimp, he testified at trial that Person G never said she worked as a prostitute. She said she was a dancer. When asked in his interview, "Did she ask you for help to get away from her pimp?," he admitted answering, "She asked me to help get away from him, yeah. Yes, she did." At trial, Respondent indicated that when he said "him," he was not agreeing that Hales's boyfriend was her pimp. He claimed, "There was no correcting IAB investigators."

Respondent denied that prostitution was promoted at Rockwell's. He admitted that he smelled marijuana once while he was seated at the bar, and he told investigators that he knew Rockwell's was not a location he should have been at as a member of the service.

Respondent had 10 to 15 phone conversations and text exchanges with Candy between November 3 and December 28, 2009. Respondent testified that he was trying to blow her off on the one hand, but also wanted to have sex with her, "so I told her what she wanted to hear." He explained that he at first thought that Candy merely wanted to dance at a club. He lost interest in her after she started to talk about performing other services for money.

Respondent conceded that he told Thomas he would be able to provide dancers for the party. Respondent claimed not to recall speaking about sex or threesomes.

Respondent admitted that one of the reasons he insured his vehicle in [REDACTED] even though his residence was listed with the Department as being in [REDACTED] was because insurance was cheaper upstate.

On re-direct examination, Respondent agreed that at his official interview it was Rothenbucher who suggested that Person G had a pimp. Respondent merely responded to Rothenbucher's questions.

FINDINGS AND ANALYSIS

Case No. 2011-3442

Introduction

The first case against Respondent involves an incident that took place on July 26, 2009, within the confines of the 73 Precinct. Respondent was working in a conditions unit with Sergeant Titus Parham. They stopped Person A on the street. She was attempting to light, or had lit, a marijuana cigarette. She was found to be in possession of several items, including the cigarette, a can of mace, and her keys. Parham directed that she be issued a summons. Respondent issued the summons but retained possession of Person A's keys.

Several of the specifications reflect the Department's view that Respondent took certain actions, or failed to take them, because he wanted to have a sexual relationship with Person A. For example, he tried to gain her affections by: (a) charging a violation when he could have charged a misdemeanor; and (b) writing the summons defectively, by misnoting the time of offense, failing to conduct a field test, and writing the incorrect residential address. According to Whorely, he never even issued a summons.

Respondent also allegedly failed to conduct a warrant check, making it effectively impossible that Person A might be arrested, rather than available later on for a sexual encounter. Because he did not care about Person A's criminal case, he felt free to leave the marijuana unsecured until she rejected him later on that morning. In other words, the Department asserted that the whole police encounter was Respondent grooming Person A for sex.

Specification No. 3

The third specification charges that Respondent failed to conduct a warrant check on Person A upon issuing her a criminal court summons. Respondent testified, as indicated on the back of the summons, that he could not complete the warrant check because the MDT was not working. He called over the radio, but was informed that NYSPIN was not working. The investigator, Duque, testified that he consulted with MISD, who informed him that there was no problem with NYSPIN that day.

The Court credits the investigator's testimony that, as per MISD, the system was working. Therefore, Respondent did not conduct the warrant check because if he did, he would have found that NYSPIN was working. As such, he is found Guilty of Specification No. 3.

Specification No. 4

The fourth specification charges that, on the summons, Respondent incorrectly listed the time of offense and Person A's residential address. The time of offense is listed as 0310, but a box marked "PM" is also checked off. Patrol Guide § 209-11 specifically directs members not to list the time of offense in military time because it is not used by the majority of the general citizenry. By writing both "0310" and "PM," Respondent made a conflicting and therefore incorrect entry. By checking the "PM" box, an "incorrect time of offense" was listed.

For the address, Respondent listed the [REDACTED] location from which Person A exited when he came to drop off her keys. Her driver license listed a North Carolina address, however. Respondent should have put the out of-state address from the license on the summons because he had no way of verifying that she resided at the [REDACTED] address, as opposed to just staying there. As such, Respondent is found Guilty of Specification No. 4.

Specification No. 5

In the fifth specification, Respondent is charged with failing to perform a field test for the marijuana he recovered from Person A. The cited Patrol Guide procedure is §§ 209-09 (15) (17). The procedure dictates that if an individual is summonsed for the violation offense of Unlawful Possession of Marijuana (Penal Law § 221.05), the officer is to write on the back of the summons that there is an attached supporting deposition; prepare the supporting deposition; and submit the summons and supporting deposition to the desk officer when voucherizing the marijuana. There is no obligation upon the summonsing officer, however, to field-test the marijuana himself. In fact, this would be impossible for the many officers, like Respondent, that are not qualified to perform field tests. Their only obligation is to hand off the evidence to be tested. Respondent is not charged with failing to do so. Accordingly, he is found Not Guilty of Specification No. 5.

Specification No. 10

The tenth specification accuses Respondent of charging Person A with the incorrect Penal Law offense. As noted, he cited her for the violation of Unlawful Possession of Marijuana. The Department asserted that Respondent should have charged the misdemeanor of Criminal Possession of Marijuana in the Fifth Degree (Penal Law § 221.10 [1]), because Person A possessed the marijuana in a public place, and it was burning or open to public view.

Respondent testified that he could only charge the violation because he did not see the marijuana in public view, or burning, before Person A opened her fist hand to him. He stated that he observed the flicker of a lighter, and something in her hand, but it was only when he approached, and she was ordered to open her hand, that he saw the marijuana cigarette.

The Court rejects Respondent's reasoning. If Person A was trying to light the cigarette, she must have had it in her open hand. The marijuana thus was open to public view at the time Respondent saw Person A holding it. Therefore, he should have charged her with the misdemeanor, not the violation. Respondent did not argue that he charged the lesser offense as a matter of leniency; he maintained only that Person A did not commit a misdemeanor.

The Court notes that Respondent self-servingly testified that Parham, his supervisor, told him to write a summons for unlawful possession because the marijuana was not burning. Parham only testified that he ordered Respondent to issue a summons. The Court finds it dubious that Parham would order Respondent to ignore the other issue, that the marijuana was open to public view, when he testified that it was Respondent that first noticed the marijuana when they were in the van. Thus, it was open to public view.

Accordingly, Respondent is found Guilty of Specification No. 10.

Specification No. 2

It is charged in the second specification that Respondent "failed to voucher" the property he recovered from Person A, specifically the marijuana, keys and mace, "in a timely manner". After issuing the summons to Person A, Respondent retained custody of the items listed in the specification. He returned to the 73 Precinct station house but did not fill out a voucher. He said that when he realized he still had Person A's keys, he contacted her to arrange a return. When they met, and she accused him of stealing the keys, he returned to the station house and vouchered all the items with the property clerk.

Respondent asserted that he took Person A's keys into custody by accident and that he intended to return them to her. In this vein, he argued, he had no obligation to voucher the keys.

The Court disagrees. It is true that there is no absolute rule that every single piece of property coming into Department custody must be vouchered. Safeguarded property may be returned to the owner. See, e.g., Case No. 86224/10 (Aug. 24, 2011) (officer could return \$20 cash to integrity-test UC who said he had lost it in a “magic trick,” not Three-card Monte, which would mean it was a crime); *Case No. 83271/07*, pp. 20-21 (Dec. 29, 2008) (officer was allowed to return valuable watch to hospitalized prisoner after it was held by officer during radiology examination). Here, however, Respondent took the keys with him back to the 73 Precinct station house and held onto them for as long as an hour, outside Person A’s presence. The proper way to protect both himself and the Department was to place the keys on the voucher. Cf. *Case No. 2011-4684* (Jan. 5, 2012) (after arresting prisoner, officer did not voucher but instead held onto his personal belongings for four days before returning them).

A similar reasoning applies to Person A’s mace. It was said at trial that the Property Clerk Division would not take possession of mace because it was a combustible material, too dangerous to be stored there. Allegedly, the mace would be thrown out. But that did not excuse Respondent from listing the mace on the voucher. Again, the appropriate way to protect himself and the Department was to document what was occurring with the mace.

The only arrest evidence was the marijuana cigarette. Instead of vouchering the cigarette immediately upon arriving at the station house, sometime after 0400 hours, Respondent held onto it until after he had returned from his second encounter with Person A. This was proved by the Property Clerk’s Invoices themselves. The invoice for Person A’s keys and mace case was P803797. The invoice for the marijuana was P803804. That means that the marijuana was vouchered at a time when Respondent had decided to voucher the keys. This, it is undisputed, would have been after the second encounter. Person A’s 911 call, at the time of this encounter as

again is not in dispute, was at 0525. Therefore, the marijuana was vouchered sometime after 0525, which was untimely.

Accordingly, Respondent is found Guilty of Specification No. 2.

Specification No. 8

The eighth specification charges Respondent with submitting an overtime slip for overtime that he did not actually perform. He was scheduled to work until 0235 hours on July 26, 2009. He put in an overtime slip indicating that he worked until 0515. The Department agreed that Respondent did, in fact, work some legitimate overtime. He and Parham were on patrol around 0315, when, Parham testified, they observed Person A attempting to light a marijuana cigarette. The Department contended, however, that when Respondent returned to the station house, he was off duty at that point. It was not disputed that Respondent contacted Person A to give back her keys and proceeded to her residence. According to Respondent, she accused him of stealing her keys. He returned to the station house, vouchered the keys and the rest of Whorley's property, and signed out at 0515.

Respondent conceded that he was off duty when he went to meet Person A. He was in street clothing and took his personal vehicle. He texted her at 0459 hours, saying that he was outside. The location was about four blocks from the command, so at the very latest, Respondent was off duty at 0458. Therefore, he was not performing overtime after that hour. He thus filed an overtime slip for overtime that he did not perform, and accordingly is found Guilty of Specification No. 8.

Specification No. 6

Respondent is charged in the sixth specification with failing to sign out end of tour on the roll call. He asserted that under the circumstances he was not required to do so. Next to his name, the return roll call was marked "L/E," log entry, signaling that one should look to the command log for his sign-out time. Respondent asserted that he handed in his overtime slip and signed out that way. Other members were also marked "L/E" on the return roll call in the same handwriting.

The point of the return roll call is both for timekeeping and so that supervisors know where personnel are. Here, the desk knew when Respondent signed out because he wrote it on the overtime slip and the return roll call was marked. He thus was accounted for. The fact that he wrongfully took overtime that day does not mean that he "did wrongfully fail and neglect to properly maintain Department records" by "omitt[ing] to sign out end of tour on the command roll call as required." Any late entry in the command log itself would have been the responsibility of supervisors. Accordingly, Respondent is found Not Guilty of Specification No. 6.

Specification Nos. 1 & 7

It is charged in the first specification that Respondent "pulled his firearm from his waist, displayed it," and said to Person A, in sum and substance, "Back the fuck away from my door." Person A told the IAB Command Center calltaker that when Respondent returned, purportedly to give back her keys, he was upset because Person A was with her friend, Person B. Respondent allegedly wanted to see Person A alone and refused to give her keys back. When Person A confronted him, he displayed his gun and said the quoted line.

Respondent denied displaying his weapon. He agreed that he met Person A to return her keys after he realized he still had them. When she accused him of stealing them, he decided to turn back to the station house and vouchered them.

The Court credits Person A's account. Although she did not appear for trial and could not be cross-examined, her 911 call was in evidence. In it, she can be heard stating, in sum and substance, in a plaintive and sincere voice, "Just give me my keys. Sir, sir, please, can you give me my keys? What are you going to shoot me?" Such a declaration, given at the moment of the incident, corroborates her hearsay account given to Duque, who took over the IAB investigation. See People v. Dove, 89 A.D.3d 1153, 1154 (3d Dept. 2011), Iv. denied, 18 N.Y.3d 957 (2012).

Moreover, Respondent's testimony makes no sense. It was not disputed that Respondent contacted Person A to return her keys and that she wanted them back, even if this was not for an amorous purpose. It would make no sense for Person A to accuse him of having stolen them. She knew he had them and simply wanted them back. Accordingly, the Court finds Respondent Guilty of Specification No. 1.

The seventh specification charges that Respondent failed to remain at the scene of the keys incident, an alleged "unusual police occurrence to which he was a participant." The incident established by the Department constitutes such an occurrence. Therefore, Respondent is also found Guilty of Specification No. 7.

Specification No. 9

The ninth specification charges that Respondent, "having become aware of an allegation of corruption or serious misconduct involving a member of the service," failed to notify either IAB or his commanding officer. This is a citation to the reporting rule stated in Patrol Guide §

207-21. It is alleged in the specification that Respondent failed to notify the Department concerning "an allegation made against him for failing to return prisoner property."

Respondent was aware that Person A was accusing him of failing to return her keys, and had called 911 to complain. Therefore, he was obligated by the procedure to report. His claim that people on the street accuse officers all the time of stealing property is both flippant and does nothing to change the fact that he was obligated to report that Person A was accusing him, no matter how lacking in merit he might have believed it to be. Accordingly, Respondent is found Guilty of Specification No. 9.

Case No. 2011-4085

Introduction

This case concerns broad allegations of prostitution and other criminal activity. The investigation began with an Auto Crime Division investigation into the theft and export of vehicles. One of the subjects was Person C. Person C was overheard on an August 2009 wiretap speaking to an unknown individual. The unknown individual spoke about his activities as a pimp, a manager and controller of prostitutes. Another wiretap mentioned a subject of the investigation saying, in sum and substance, "My boy is a DT," and that his name was Monty. IAB investigators determined that the phone number for the unknown individual belonged to Respondent Police Officer Monty Green.

Investigators began looking into Respondent's activities. They determined that he frequented Rockwell's Bar and Lounge, an establishment in downtown Brooklyn. They also determined that he frequented areas known for street prostitution. He was observed driving around these areas and speaking to individuals that appeared to be sex workers.

Specification No. 5

The fifth specification charges that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by patronizing Rockwell's, "a premises used in the commission of criminal acts." It was alleged that sexual conduct occurred at Rockwell's in a manner that evinced prostitution. It was also alleged that marijuana was being sold or smoked there.

The evidence demonstrated that Rockwell's operated as a sort of strip club on certain occasions, specifically Sunday nights. Nude dancing is not a violation of the Penal Law, or any of the consolidated laws for that matter. But many such establishments offer "lap dances," in which the dancer gyrates on the body of the customer. While it was not disputed that this is not a per se violation either, the Department alleged that the conduct at Rockwell's went beyond this. Investigators described that the dancers might have been completely nude on occasion. The Department pointed out that it is a violation of New York law to dance with the pubic, genital and anal areas completely uncovered in establishments selling alcohol at retail for on-premises consumption. See Alcoholic Beverage Control Law § 106 (6-a); Bellanca v. New York State Liquor Auth., 54 N.Y.2d 228 (1981). While this is not a criminal offense, the Department submitted that Respondent should have realized, in light of the total nudity, that Rockwell's was not adhering to legal requirements and that other unlawful activity, like prostitution, might be occurring.

Investigators testified that the dancers would dance, for money, with male customers against the wall of the club. The women's faces were near the customers' genitals and vice versa. One dancer placed an investigator's hand on her genitals, underneath the clothing. This activity took place in the main part of the club. Both oral and vaginal sex were offered in

exchange for money. Dancers would ask the investigators if they wanted to go upstairs or in the back of the club for other activities in exchange for a fee.

If that was what occurred at Rockwell's, it was prostitution. The investigators' descriptions of the acts at Rockwell's satisfied the "lap dance plus" definition of sexual conduct in People v. Hinzmann, 177 Misc. 2d 531, 544, 544 n.2 (Crim. Ct., Bx. County 1998) (combination of dancer sitting and moving around on male customer's lap, and allowing him to touch dancer's naked breasts and buttocks, constituted sexual conduct). It may not be how most people think of that term, but prostitution in New York is defined as engaging in sexual conduct with another in exchange for a fee. Penal Law § 230.00. It is not shocking or unexpected that prostitution might occur at a strip club. This Department has made arrests in the past for prostitution activity at otherwise legitimate establishments with much more well-known names than Rockwell's.

Patrol Guide § 203-10 (11) prohibits members from "[h]aving an interest in or association with premises engaged in illegal gambling operations, smoke shops, after hours clubs or similar illegal activities." Although Respondent is not charged under this procedure, the Court does not find it disputation that it would be contrary to the good order, efficiency or discipline of the Department knowingly to be present at an establishment where prostitution occurs in open view, or where it is solicited to occur in a back room. Cf. Case No. 75671/00, p. 17 (Dec. 26, 2001) (officer had ample opportunity to ascertain whether establishment was licensed to serve alcohol, so the knowledge that it was not so licensed could be imputed to him; moreover, he should have suspected that it was a prohibited establishment based on the presence of gambling machines and evidence of a fencing operation).

The investigators testified credibly that sexual conduct occurred at Rockwell's, in open view and otherwise, in exchange for a fee. They had no reason to fabricate their accounts. Respondent, on the other hand, flatly but unconvincingly said that he just sat at the bar and faced forward. He saw nothing, heard nothing, and knew nothing. As one investigator, Flunory, noted, "If he didn't see that, then he is not a police officer." As such, Respondent is found Guilty of Specification No. 5.

Specification No. 1

The first specification charges that Respondent "knowingly associate[d] with six (6) individuals reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities," in that Respondent was in contact with them in person or by telephone. These were, according to the lead Advocate, Person C, Person E, Person F, Person D, Person G, and Person H.

The latter three individuals were dancers at Rockwell's or had arrest records for prostitution. Person E was a promoter or manager at Rockwell's; Person F was a bouncer. Respondent interacted with both on a regular basis when he attended Rockwell's. Because all of these individuals worked at Rockwell's, they were "reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities." Accordingly, Respondent is found Guilty of the first specification.

Specification No. 2

The second specification charges Respondent with failing to take police action "having observed or after being made aware that individuals in his company were in possession of

marijuana and involved in the act of or in the promotion of prostitution" between August 1, 2009, and January 10, 2010. The Department proved that Respondent associated with various individuals, including Person E, Person F, and several dancers, who essentially were operating a prostitution business at Rockwell's on Sunday nights. He also smelled marijuana while sitting at the bar. Respondent had an obligation to take some sort of police action once he realized this was happening and the testimony of the Department's investigators proved that he would have realized it. His failure to do so was "clearly wrong and contrary to the training and practices of a reasonable police officer." See Case No. 75201/99 et al., Police Comm'r's Mem., pp. 6-7 (May 27, 2003) (stating rule as to whether off-duty officers had obligation to take police action while at scene of a shooting [emphasis in original]). Accordingly, Respondent is found Guilty of Specification No. 2.

Specification No. 4

The overall "theme" of this case has been that Respondent, a police officer, also allegedly was a pimp. In fact, Respondent is not charged specifically with the Penal Law crime of promoting prostitution, see Penal Law §§ 230.15 et seq. Rather, the Department has alleged, in the fourth specification, that Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by having "multiple conversations with undercover officers, identities known to the Department, encouraging prostitution and soliciting clients for the purpose of engaging in sexual acts in exchange for money."

The first of these undercover officers testified under her UC number, WXYZ. She was assigned by IAB to "bump" Respondent, or meet him under circumstances that would appear

incidental. She did so by pulling over in a vehicle with a female "friend" and asking Respondent for directions. She identified herself as "Candy." They exchanged contact information.

UC WXYZ admitted that she initiated the contacts between herself and Respondent, over the phone. In the first phone call, made on November 4, 2009 (DX 21 & 21a, recording & transcript, respectively), UC WXYZ told Respondent that she was a dancer at strip clubs but she did "more than just dance." Respondent told her that he was a bouncer at "a legitimate bar," but he had a friend who was a "promoter, and he promotes underground aspects of that, of what you're talking about, I guess."

The undercover told Respondent that she "never had anyone take care of me, you know?" Respondent eventually got her meaning — she never had a pimp — because he asked her why that was the case. UC WXYZ told him she was afraid.

UC WXYZ told Respondent that she would go with her friend from the original meet-up to perform at various places. "[I]f someone wanted something extra I would go in the back and, you know, do whatever." UC WXYZ's friend, however, did not like that she was "sucking dick in the back." Respondent told UC WXYZ that "the place I'm thinking about is like that. You can . . . do like wall dances and shit like that, you can do, you know, everything. Everything goes there." This apparently was a reference to Rockwell's. Respondent was unable to tell UC WXYZ how much money she might make because he did not get a good enough look at her. She assured him that she did "everything," and he answered, "I know because sometimes I need you to do everything." He wanted to explain the place more to her because "not everybody's been to underground spots before and how the shit works, what do you do, what you don't do, stuff like that." He would explain more when they met in person.

Respondent asked UC WXYZ whether she was interested in him, i.e., romantically. She told him that she just wanted to make money. He replied, "Okay. So . . . do you want a daddy?"

Respondent did not meet up with UC WXYZ, however. She called him again a little less than a week later, feigning anger (see DX 22 & 22a). She pressed him for details, asking, "So if I go in these clubs and have sex and give blow jobs, whatever, I'll come out and you're going to be there or you're going to be with me or how is it going to work?" Respondent answered that sometimes he would be inside and sometimes outside. When UC WXYZ asked how much Respondent would get, he replied that it depended on how well she did. Again, she pressed him for an example on what his cut would be if she made, for instance, \$150 for giving oral sex. He demurred, but when she insisted, he said that he would keep \$200 if she made \$500. He agreed that he would "stash" her money and give it to her as needed. They talked about prices again on December 2, 2009 (DX 24 & 24a). On December 1, 2009, Respondent assured UC WXYZ that he would pay her rent if he were to take care of her (DX 23 & 23a).

On December 16, 2009 (DX 25 & 25a), UC WXYZ called Respondent and told him that a male friend of hers asked if she could provide women for a party he was throwing for his friends. He wanted to "send them off, you know, happy." Respondent wanted to know "when and where," and who the friend was. UC WXYZ told Respondent that she quoted the friend a price of "\$75 for a blowjob and \$125 for sex." Respondent assured her that this sounded correct for a private party. UC WXYZ gave Respondent the friend's contact information and name, "Thomas."

On December 22, 2009, Respondent spoke with "Thomas," actually then-undercover officer Person L. Respondent wanted specifics on the location, which Person L said was a hotel room. Person L told Respondent that he was looking only for oral sex and

“straight up sex” (i.e., vaginal intercourse, as opposed to anal sex, which Person L said he was not seeking). Person L also said he wanted “to send my man away with a threesome.”

Respondent said it was no problem to provide what Person L was looking for. Respondent assured him that “everything’s straightened out,” but noted that if members of the party wanted “extra stuff,” they would have to “work that out with the girls, you know.” Respondent said he might be there, or the men could give the money to the women directly. He did not want to get half up front from Person L and Respondent spoke again on December 23, 2009 (DX 28 & 28a). They confirmed the hotel location. Respondent said he would provide three women, or more if Person L wished. They would stay for around three hours.

The rendezvous never occurred. Person L called Respondent on December 28, 2009 (DX 29 & 29a), but Respondent blamed Candy for the non-appearance. Person L asked if Respondent could send just one woman, but Respondent was unsure. He advised Person L to call Candy back.

The entirety of the evidence confirms that Respondent was encouraging prostitution and soliciting clients for that purpose. His conversations with UC WXYZ and Person L negate his Mitty-esque defense that he was just living out a fantasy and acting like a pimp, playing along with what others were telling him. Rather than merely parroting what others said, Respondent provided valuable guidance on how a prostitute could work inside a strip club. He also gave specific details about price and location to a potential customer.

Furthermore, while Respondent might have wanted to have sex with UC WXYZ, he also offered to be her pimp. His claim that his offer to be her “daddy” merely was a desire to engage in an age-based sexual fetish is refuted by the fact that he asked her this right after she told him

she was not interested in a relationship with him and wanted to make money. And when he asked her again about being her “daddy,” she indicated that she did not know what such a situation entailed. Respondent assured her that, “Well, one night I’ll put you on,” and asked her if she had “regular spots” that she went to. Finally, he told her that he would pay her rent, a strange promise to make to a potential girlfriend you met only once before unless he was going to pay her rent as her pimp, not her boyfriend.

Any doubt that Respondent was unclear about the details of the sex trade was dispelled by his conversation with Person C, in which Respondent displayed wide-ranging knowledge of how pimps and prostitutes interacted with each other on the street and in clubs. His claim that the use of the term “bitch” merely was a slang reference to a future girlfriend, not a woman who might become a prostitute working for him, was laughable. Although he denied knowing that “charge” was a prostitution term, his explanation that it “was what was owed. . . . because the girl had, the guy had brought her some shoes or something like that” demonstrated that he knew full well it was a prostitution reference.

Visual surveillance of Respondent interacting with known sex workers in various street prostitution spots corroborated his conversations with Candy and Thomas to establish that he actually was interested in being involved in prostitution.

Accordingly, the Department proved Respondent Guilty of having “multiple conversations with undercover officers . . . encouraging prostitution and soliciting clients for the purpose of engaging in sexual acts in exchange for money.” Thus, he is found Guilty of Specification No. 4.

Specification No. 3

The third specification relates to insurance “rate jumping.” The Department here alleges that Respondent, between June 1, 2008, and December 15, 2010, “maintained insurance for his personal vehicle using an address in [REDACTED] and had said vehicle registered to said address, when in fact he resided [REDACTED].” Respondent had title to one Nissan Infiniti. It was not disputed that Respondent’s domicile for that time period was [REDACTED]. He had another residence in the hamlet of [REDACTED]. Respondent’s insurance policy for the vehicle listed the [REDACTED] address as his residence.

It is not a violation of either the law or the Patrol Guide to register a vehicle at a location that is not your domicile, but is a place where you reside. See Case No. 84794/08, pp. 17-18 (Oct. 4, 2011). The Department presented unrebutted evidence through Rothenbacher, the lead investigator, establishing through multiple surveillances that Respondent’s vehicle was garaged primarily in [REDACTED]. Information from the insurer, Allstate, revealed that the difference between the [REDACTED] residence on the policy and [REDACTED] was \$1,797.40 every six months.

But Respondent is not charged with garaging the vehicle in [REDACTED] and having it insured using the [REDACTED] address. This would be a violation only of a contract between insurer and insured. No such contract was offered into evidence. Respondent is charged only with registering and insuring a vehicle at the [REDACTED] address while his domicile was [REDACTED]. There is, in fact, no prohibition against what is charged in the specification. Therefore, Respondent is found Not Guilty. But see Case No. 85334/09, pp. 17 21 (June 21, 2010) (finding officer Guilty in Part based on similar specification).

Specification No. 6

The sixth specification charges Respondent with failing to notify the DMV of his change of address. It is unclear what this means. There is no evidence that Respondent had any change of address. He was always domiciled at his [REDACTED] address and always had possession of the [REDACTED] residence. Therefore, Respondent is found Not Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of several serious violations of the Patrol Guide. First, he manipulated a summons situation into an opportunity to pressure a woman into spending time with him off duty. When she demurred, he punished her by threatening her with his weapon and refusing to return her keys. Second, Respondent consulted on and encouraged the practice of prostitution with a specific woman. He also solicited clients for a bachelor-party type of event at which prostitution was to take place. He spent long periods of time at Rockwell's Bar and Lounge, where prostitution took place openly through the guise of a legitimate nightclub.

Under the circumstances, the Court recommends that Respondent be DISMISSED from employment with the Department. See Case No. 75264/99 (Mar. 16, 2002) (termination for officer who provided security services for prostitutes upon being hired by undercover officer posing as "madam").

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MONTY GREEN
TAX REGISTRY NO. 934330
DISCIPLINARY CASE NOS. 2011-3442 & 2011-4085

In 2011, Respondent received an overall rating of 3.0 "Competent" on his annual performance evaluation. He was rated "3.5 "Highly Competent/Competent" in 2009 and 4.0 "Competent" in 2010. [REDACTED]

Respondent has been the subject of one prior adjudication. He received charges and specifications in 2008 for entering a private residence without justification. A Department trial resulted in a determination of Not Guilty. He has been on Level-II Discipline Monitoring since April 2008.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials